



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2017-0270]

Hours of Service of Drivers: National Tank Truck Carriers, Massachusetts Motor Transportation Association; Exemption Correction

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Correction of exemption.

SUMMARY: FMCSA amends its April 9, 2018, Notice of Final Disposition granting a limited exemption to the National Tank Truck Carriers, Inc. (NTTC) and the Massachusetts Motor Transport Association, Inc. (MMTA) from the requirement that drivers of commercial motor vehicles (CMVs) obtain a 30-minute rest break. The Agency granted the limited exemption to drivers of CMVs transporting specified fuels, and failed to include propane gas as a specified fuel as requested by the National Propane Gas Association (NPGA). This notice corrects that oversight.

DATES: The exemption is effective April 9, 2018 and expires on April 10, 2023.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, please contact Mr. Buz Schultz, FMCSA Driver and Carrier Operations Division; Telephone: (202) 366-2718; E-mail: Buz.Schultz@dot.gov.

SUPPLEMENTARY INFORMATION:

Request for Exemption

NTTC and MMTA applied for an exemption from the 30-minute rest break provision of the hours of service (HOS) rules (49 CFR part 395) on behalf of motor carriers and drivers operating tank trucks to transport certain petroleum-based products in interstate commerce. The tank trucks are normally loaded with products in the morning,

and deliver the products to three or more service stations during the remainder of the duty day. Most of the estimated 38,000 vehicles engaged in such transportation each day qualify for the 100 air-mile radius exception, but circumstances beyond the control of the motor carrier and driver occasionally cause delays in the delivery schedule. If a driver cannot complete his or her duty day within the 12-hour period specified by the 100 air-mile radius exception, he or she must at the first opportunity take a 30-minute rest break. This is problematic, however, for tank truck drivers delivering hazardous materials (HM). For instance, as a security measure, a motor carrier may require that a tank truck transporting certain fuels be attended by the driver when the vehicle is stopped, and a driver attending a CMV is not off duty as required by the rest-break rule. It is also difficult to find safe and secure parking for tank trucks on such short notice.

On September 26, 2017, FMCSA published notice of the application for exemption and asked for public comment (82 FR 44871). The National Propane Gas Association (NPGA) submitted a request for the inclusion of transporters of propane gas if the exemption were granted. FMCSA determined that the level of safety achieved by drivers transporting petroleum and propane products under the terms and conditions of the exemption, would be equal to, or greater than, the level of safety that would be achieved if the drivers were required to take the rest break. On April 9, 2018, the Agency granted a limited exemption (83 FR 15221). All drivers exercising the exemption must maintain an HOS log and complete their duty day within 14 hours. FMCSA inadvertently failed to include the products transported by NPGA motor carriers and drivers: propane fuels U.N. 1075 and U.N. 1978. This notice corrects that oversight. The NTTC and MMTA have advised that they have no objection.

FMCSA corrects this oversight by amending paragraph 3 of the Terms and Conditions published on April 9, 2018. The amendment adds the propane fuels U.N. 1075 and U.N. 1978 to the products listed in that paragraph. Qualifying drivers transporting these products are entitled to the exemption from the 30-minute rest break. The expiration date of this exemption remains unchanged: April 10, 2023. The complete Terms and Conditions, as amended today, are as follows:

Terms and Conditions of the Exemption

1. This exemption from the requirements of 49 CFR 395.3(a)(3)(ii) is effective April 9, 2018 and expires on April 10, 2023.
2. This exemption applies when a driver who normally operates under the 49 CFR 395.1(e)(1) short-haul exception finds that operational issues require him or her to exceed the 12-hour limit of that exception. Drivers operating under this exemption must, however, return to their work reporting location and be released from duty within 14 hours of having come on duty following 10 or more consecutive hours off duty.
3. This exemption is limited to motor carriers and drivers engaged in the transportation of the following petroleum products: U.N. 1170 – Ethanol, U.N. 1202 – Diesel Fuel, U.N. 1203 – Gasoline, U.N. 1863 – Fuel, aviation, turbine engine, U.N. 1993 – Flammable liquids, n.o.s. (gasoline), U.N. 3475 – Ethanol and gasoline mixture, Ethanol and motor spirit mixture, or Ethanol and petrol mixture, N.A. 1993 – Diesel Fuel or Fuel Oil, U.N. 1075 and U.N. 1978 – propane fuels.
4. This exemption is further limited to motor carriers that have an FMCSA “satisfactory” safety rating or are “unrated”; motor carriers with “conditional” or “unsatisfactory” safety ratings are prohibited from utilizing this exemption.

5. Drivers must have a copy of this exemption document in their possession while operating under the terms of the exemption and must present it to law enforcement officials upon request.

Accident Reporting

Motor carriers employing this exemption must notify FMCSA by email addressed to MCPSD@DOT.GOV within 5 business days of any accident (as defined in 49 CFR 390.5T) that occurs while its driver is operating under the terms of this exemption. The notification must include:

- a. Identifier of the Exemption: “NTTC,”
- b. Name of operating carrier and USDOT number,
- c. Date of the accident,
- d. City or town, and State, in which the accident occurred, or closest to the accident scene,
- e. Driver’s name and license number,
- f. Name of co-driver, if any, and license number,
- g. Vehicle number and state license number,
- h. Number of individuals suffering physical injury,
- i. Number of fatalities,
- j. The police-reported cause of the accident,
- k. Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations, and
- l. The total driving time and total on-duty time prior to the accident.

Safety Oversight

FMCSA expects the motor carriers and drivers operating under the terms and conditions of this exemption to maintain their safety record. However, should safety deteriorate, FMCSA will, consistent with the statutory requirements of 49 U.S.C. 31315, take all steps necessary to protect the public interest. Authorization of the exemption is discretionary, and FMCSA will immediately revoke the exemption of any motor carrier or driver for failure to comply with the terms and conditions of the exemption.

Preemption

In accordance with 49 U.S.C. 31313(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce

Issued on: November 1, 2018.

Raymond P. Martinez,
Administrator.